



ACORN

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INTRODUCTION

The Association of Community Organizations for Reform Now (ACORN) is a national coalition of neighborhood groups made up of over 100,000 low and moderate income, mostly minority families in cities across the United States. Our membership is dedicated to improving the quality of our neighborhoods. This includes working with banks to develop affordable bank accounts and organizing welfare workers around the country, many of whom have to utilize state electronic benefit delivery systems. In this vein, we look toward the Electronic Funds Transfer '99's (EFT 99) mandate as an opportunity to overcome a vexing problem facing our communities--the lack of banking relationships--and obtain mainstream financial services at reasonable cost. Unfortunately, the U.S. Department of Treasury's (Treasury) proposed program fails to provide such an account.

EFT 99 requires all federal payment, except in the case of income tax returns, to be made by electronic transfer by January 2, 1999. To aid the implementation of this law, federal benefit recipients must obtain an account at a federally insured depository institution in order to receive their federal payment. In order to protect recipients from exploitation, Congress mandated that Treasury ensure that recipients have access to an account at reasonable cost with same consumer protections as other account holders.

To meet this mandate, Treasury proposes that recipients have several options to comply with the law. First, it allows them to designate an account they have already established to receive their Federal payment. They can establish a new account and designate that as the vehicle to receive the payment. Under some circumstances, recipients may be able to waive their obligation under EFT and continue to receive their payment in check form. Absent a waiver, if the recipient does not have an account, Treasury will assign them a default account that Treasury will establish at a Federally-insured depository institution. In any of these cases, a non-financial firm may partner with the financial institution to market and provide products and services to recipients.

This proposal, however, does not fulfill its Congressional mandate. First, it does not ensure that recipients will have access to an account at reasonable cost and with the same consumer protections as other account holders. Second, it does not provide enough waiver opportunities to protect those recipients who are left without appropriate accounts. Not surprisingly, recipients are left without access to basic, mainstream financial services at reasonable cost.

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FAILS TO ENSURE ACCESS TO ACCOUNTS

The EFT 99 enacting legislation clearly states that, "[Treasury's] regulations under this section shall ensure that individuals required . . . to have an account at a financial institution because of [EFT 99] . . . will have access to such an account at a reasonable cost; and . . . are given the same consumer protections with respect to the account as other account holders at the same financial institution." In so doing, Congress mandates that Treasury protect the interest of federal benefit recipients by getting them accounts without harming the recipient. However, Treasury uses few means to meet this obligation and underutilizes those means it does employ.

1. Refuses to Use It's Power to Regulate.

First, Treasury refuses to employ the easiest means of meeting this obligation--regulating financial institutions to require they provide basic accounts at reasonable cost to recipients without accounts. In defending this stance, Treasury simply states that it ". . . does not believe that financial institutions should be required to provide these types of account services as a result of the Act." This is not a compelling argument because it is not an argument at all but, instead, is an unsupported assertion. Congress gives Treasury the authority to require financial institutions to provide these accounts to all federal payment recipients and, if necessary, Treasury ought to use it.

ACORN believes that financial institutions should be required to provide a basic account at a reasonable price to individuals because it is a necessary item for individuals to participate in the financial mainstream, which is a good thing by Treasury's own estimation.

Besides that point, Treasury should mandate basic bank accounts at a reasonable price because the U.S. government ought not enhance its position at the expense of the people it serves. Full implementation of the Act is expected to achieve Government-wide savings of about \$100 million per year. Ten million benefit recipients, however, will have to incur the cost of an account that they previously eschewed. Despite Treasury's announcements in this regulatory proposal, there are no inherent benefits which offset those costs--that is why people live without bank accounts--but, there ought to be an offset. The people come first and should benefit from every interaction with its government.

Moreover, Treasury ought to take this action because it's good governance. Ten million recipients are without bank accounts and do business outside of the financial mainstream. Circumstances--such as, cost and convenience--prevent many from acquiring bank accounts. EFT 99 gives Treasury the power to remove those impediments and allow those ten million people the opportunity to participate in and reap the benefits of this country's financial mainstream.

By refusing to regulate financial institutions, Treasury risks that financial institutions will continue the practices that have left ten million people without accounts or that non-financial institutions will partner with financial institutions and market products and services to recipients that harm people. Thus, Treasury fails to meet its Congressional mandate.

2. Refuses to develop model account and price schedule.

Secondly, Treasury has not established an alternative to regulation that will meet its mandate. Treasury refuses to develop a model deposit account and invite financial institutions to offer this account, to individuals without accounts, at a specified price or at a price below some ceiling it determines. Apart from the efficacy of such an account--which

we might dispute--Treasury argues that identifying institutions willing to participate in a voluntary program and monitoring their activities would require the creation and maintenance of a regulatory infrastructure.

At least the first part of that argument goes to support the need for regulation. EFT 99 mandates recipients have federally insured depository accounts. If recipients are expected to have accounts, but federally insured depository institutions are unwilling to provide accounts, then recipients will be in a difficult position. In that scenario, Treasury must require that federally insured depository institutions provide accounts. The second part of that argument is a false reason because it ignores the fact that the U.S. already has a bank regulatory system.

Again, Treasury's stance creates no system that considers the needs of the unbanked community and leaves millions at the mercy of the fringe banking system. Thus, Treasury again fails to meet its Congressional mandate.

3. Utilizes Inadequate Default Account Program.

Treasury does propose a third approach. Treasury proposes to engage one or more Federally-insured financial institutions to act as it's financial agent for the provision of accounts to those individuals.

Establishing default accounts appears to be a sound approach. Ten million people suffering the lack of a banking relationship is convincing evidence of the difficulty of the problem. All means ought be employed to solve it. But not just any system providing default accounts will solve the problem of unbanked communities. The default accounts must be widely available and adequately structured to help people comply with EFT 99 without harm to themselves.

a. Unreasonably limits access.

Unfortunately, as proposed, the default account will not be widely available. Treasury will only provide these accounts to recipients that do not have, or do not choose to open, accounts at financial institutions of their own choice. We interpret the regulation to read that once a person opens an account, they will never have access to the default account. The proposal does not state why access to the default account should be so restricted.

Instead, Treasury should make this account available to all federal payment recipients, regardless of when they may have a voluntarily established account. Otherwise, the proposed restriction will deny many recipients the only opportunity currently present in the proposal where Treasury might provide an account at a reasonable price with the same consumer protections as other account holders. Also, this policy will lessen the number of participants in the program, possibly raising the cost per person of the program for recipients. Changing the policy will avoid these problems and will have the added benefit of putting market pressure on other federally-insured financial depository institution to improve their account products.

b. Allows fringe bankers.

Moreover, Treasury may allow some functions of the default account to be performed by non-financial institutions working in partnership with the financial agent. That would be inappropriate. Non-financial institutions have sprung up largely because banking institutions do not exist in our neighborhoods but that does not make them a suitable alternative. They provide less services at exorbitant prices. Moreover, they are the

infrastructure of a fringe banking system and to employ them here would be to entrench that system and undermine any effort at bringing unbanked recipients into the financial mainstream.

c. Fails to Set Forth Minimum Standards.

Finally, Treasury has not yet defined the attributes of the default account beyond establishing a preliminary view that each recipient should have an individual account at a Federally-insured financial institution that can be directly accessed via a plastic debit card at any location of that institution, including any automated teller machines or point-of-sale terminals that accept transactions by the institution's card holders.

The preliminary view is too restrictive. Yes, each recipient should have an individual account at a Federally-insured depository institution. However, access should not be limited to a debit card at only the institution's network of ATMs and POS terminals. Moreover, the attributes of the account should address the real financial necessities of low and moderate income people. In fact, whether through regulation, the promulgation of a model account, the linkage with state EBT programs anticipated by Treasury or the establishment of default accounts, these attributes must be the basic standard demanded by Treasury. Below is the list of those necessary attributes.

**MINIMUM STANDARDS FOR
EFT REQUIRED RECIPIENT ACCOUNTS**

- **Limit monthly fees:** There should be no monthly fees for basic banking services. Nor should there be any minimum balance requirements.
- **Limit withdrawal fees:** 1) Recipients should have at least four free ATM withdrawals per month. 2) Point of Sale transactions should be free. 3) Recipients should be protected from fees associated with withdrawals from "foreign" ATMs and POS terminals.
- **Provide reasonable checking services:** 1) Recipients should have 10 free checks or money orders, monthly. 2) Limit bounced check fees.
- **Provide reasonable access to benefit:** 1) Either ATMs or tellers of home insured depository institution must be widely available. 2) ATMs and POS devices must be accessible to handicapped people.
- **Provide easy replacement of PINs and cards:** Recipients must have simple and quick procedures for requesting and promptly obtaining a replacement card and/or PIN. Moreover these procedures must be spelled out in the informational materials provided about the account.
- **Provide deposit capability:** Recipients should be allowed to make electronic and paper deposits into the account.
- **Provide free account inquiries:** Monthly statements must be provided free. Moreover, recipients must be provided one free account activity inquiry via teller per month.
- **Prohibit Stigma:** Federal benefit recipients should have the name of the financial institution through which their payments are flowing prominently displayed on any

Benefit Security Card. To avoid unnecessary stigma, no markings signifying user as a benefit recipient should be apparent on the card.

- **Provide Consumer Protections:** Financial Institutions must offer bank accounts with specific consumer protections such as Regulation E. Moreover, benefits must be free from attachment. Also, Treasury must contract only with insured depository institutions to provide ETA.

DOES NOT PROVIDE ENOUGH WAIVER OPPORTUNITIES

This proposal does not provide enough waiver opportunities to protect recipients from a harmful EFT 99 program. For instance, Treasury will limit who is eligible for its proposed financial hardship waiver to only recipients without accounts. It is unclear if this refers only to recipients without accounts at the time of the application for benefits or, if it instead refers to any recipient that finds themselves without an account even after they've been matriculated into the EFT 99 program.

Assuming the former interpretation, Treasury wrongly fails to anticipate the possibility that people's circumstances change. Treasury argues for this provision of the proposal by stating that recipients with an account will not incur any additional expense to receive payment by EFT 99. Financial hardship should not be interpreted to mean that the program presents additional cost to recipients but, instead, should be interpreted to mean that the absolute cost associated with the program is too high.

"Too high," of course, is relative, but financial hardship should relate to the recipient's ability to pay. This ability could change over time. For instance, an elderly couple may rely on two federal benefit payment checks. That income might be enough to afford a bank account. However, upon the death of a spouse, the income will shrink, as well the ability to pay for a bank account. If such occurs, or any other thing occurs that makes EFT 99 a financial hardship to the recipient, then the recipient ought to be allowed to waive their obligation to get an account under EFT 99.

Thus, ACORN strongly urges Treasury to adopt the latter interpretation. Recipients, who find themselves without an account at any time, ought to be able to claim a financial hardship waiver from EFT 99. Like Treasury proposes in other waiver cases, the certification should be based on the individual's own evaluation of his or her circumstances. Moreover, the recipient should not experience any delay in receiving their benefit and clear procedures ought to be established and widely publicized to ensure such.

Also, Treasury will not grant waivers for mental, educational, and language hardships at all. In support of that policy, Treasury argues that its experience suggests that the obstacles posed by these factors are not uniquely associated with the use of EFT. These would be a problem for check users, too. Moreover, in implementing EBT, the benefit agencies have found that educational and language barriers present a challenge in making the transition to EFT, but the transitional hurdle is short-lived and ameliorated by educational programs targeted to the specific needs of recipients.

ACORN strongly urges Treasury to reconsider this policy.

CONCLUSION

Congress not only mandates that everyone who receives a federal benefit payment get a bank account, but it empowers Treasury to help them get it. Thus, EFT 99 presents a unique opportunity for Treasury to bring millions of people and the financial mainstream together. Unfortunately, Treasury's proposal falls far short. Instead, Treasury ought to revise its proposal to conform with our suggestions. In so doing, Treasury can finally knock the barriers that have kept many out of the financial mainstream and deprived them of the benefits of participation.